

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

32135

FILE: B-217603
B-217584

DATE: September 4, 1985

MATTER OF: Egbert H. Thompson and Sam Losoya

DIGEST:

Transferred employees who purchased residences at their new duty stations were charged loan origination fees of 3 and 3.5 percent. The employees may be reimbursed these loan origination fees to the extent that local Department of Housing and Urban Development offices have determined them to be reasonable and customary in the area for the type of transaction involved.

The Veterans Administration has asked for guidelines with respect to reimbursing employees for loan origination fees incurred in connection with the purchase of a residence at a new duty station. An agency may reimburse an employee's loan origination fee not to exceed the amount that local Department of Housing and Urban Development officials have determined are reasonable and customary in the locality for the type of transaction involved.^{1/}

BACKGROUND

Mr. Thompson

Mr. Egbert H. Thompson, an employee of the Veterans Administration, was transferred from Washington, D.C., to Miami, Florida, in March 1984. He purchased a residence in Miami and paid a 3 percent loan origination fee in the amount of \$2,850 to U.S. Mortgage Company. In addition Mr. Thompson paid Cowger & Miller Mortgage Company a loan discount of 2 percent in the amount of \$1,900. The Veterans Administration has reimbursed Mr. Thompson for a 1-percent loan origination fee or \$950. However, a local official of the Department of Housing and Urban Development has advised

^{1/} Mr. Conrad R. Hoffman, Director, Office of Budget and Finance (Controller), Veterans Administration, has requested an advance decision on the loan origination fees of Mr. Egbert H. Thompson and Mr. Sam Losoya.

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the Veterans Administration upon examination of Mr. Thompson's settlement charges that loan origination fees of 2-1/2 to 3-1/2 percent are customary for conventional mortgages in the Miami area. In view of our decision Roger J. Salem, 63 Comp. Gen. 456 (1984), the Veterans Administration has requested guidance as to whether Mr. Thompson may be reimbursed an additional 2 percent for his loan origination fee.

Mr. Losoya

Mr. Sam Losoya, an employee of the Veterans Administration, was transferred from Long Beach, California, to Seattle, Washington, in February 1984. Mr. Losoya purchased a residence in Kent, Washington, and paid a 3.5-percent loan origination fee to Washington Mutual Savings Bank in the amount of \$2,660. In addition he paid a 2-percent loan fee to Pacific West Escrow Company. Again the Veterans Administration reimbursed the employee 1 percent of his loan origination fee and requested guidance on whether he is entitled to an additional amount in accordance with Roger J. Salem, 63 Comp. Gen. 456, supra. The Veterans Administration Medical Center in Seattle has indicated that Mr. Losoya's settlement charges were reasonable and customary for the area.

DISCUSSION

Under the provisions of 5 U.S.C. § 5724a(a)(4) (1982) and the implementing regulations, the Federal Travel Regulations (FTR), incorp. by ref., 41 C.F.R. 101-7.003 (1984), an employee may be reimbursed for certain real estate expenses incurred when transferred to a new duty station. Paragraph 2-6.2d of the FTR lists various miscellaneous expenses related to real estate transactions which may be reimbursed. Our decisions had previously held that a loan origination fee constituted a finance charge under Regulation Z and could not be reimbursed under FTR para. 2-6.2d unless the fee was broken into specific charges which were excluded from the definition of a finance charge. Stanley Keer, B-203630, March 9, 1982. However, the General Services Administration amended FTR para. 2-6.2d in GSA Bulletin A-40, Supplement 4, effective October 1, 1982, to authorize reimbursement of loan origination fees.

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We noted in Robert E. Kigerl, 62 Comp. Gen. 534 (1983), that although a loan origination fee may constitute a finance charge within the meaning of Regulation Z, the General Services Administration has now authorized reimbursement under the provisions of FTR para. 2-6.2d. We held that the amendment was consistent with the authorizing legislation and hence would be followed by our Office.

In our decision, Roger J. Salem, 63 Comp. Gen. 456, supra, we discussed reimbursement of loan origination fees in detail. In that case we determined that the bulk of a 5-percent loan origination fee paid by the employee was not reimbursable since it represented a mortgage discount. Simply stated, a mortgage discount is prepaid interest intended to compensate a lender for the fact that the interest rate of the mortgage is lower than that available to the lender from alternative investment opportunities.

In that decision we stated that since a lending institution's statement that a particular fee represents a loan origination fee cannot be accepted as the final legal characterization of the payment, in the absence of specific guidelines from the General Services Administration, we would examine loan origination fees on a case-by-case basis in light of FTR para. 2-6.2d. We relied upon advice of the Department of Housing and Urban Development local office that, in the Chicago area, lenders customarily charge a loan origination fee of 1 percent. In the absence of a definitive showing that the customary charge there was higher, reimbursement was limited to 1 percent. See also, Mark Kroczyński, B-216251, February 25, 1985.

CONCLUSION

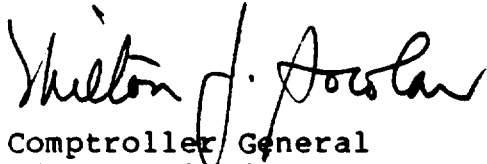
Mr. Thompson

The local Housing and Urban Development office has indicated that the customary loan origination fee charged by lenders in the Miami area is 2-1/2 to 3-1/2 percent. Mr. Thompson paid a fee of 3 percent. This loan origination fee is within the maximum customarily charged in the locality. In the absence of other guidelines, the determination as to what is reasonable and customary in a locality may be followed in determining Mr. Thompson's entitlement to a loan origination fee. Accordingly, he may be reimbursed the additional 2 percent loan origination fee.

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Mr. Losoya

Mr. Losoya paid a loan origination fee of 3.5 percent, and the Veterans Administration Medical Center has stated that his settlement charges were reasonable and customary. However, there is no indication of whether this statement was based on information provided by the local Department of Housing and Urban Development office. The certifying officer should obtain this information from that Office. Mr. Losoya may be reimbursed for the additional loan origination fee to the extent that the fee does not exceed the reasonable and customary amount for his locality as determined by the local Housing and Urban Development office.


Acting Comptroller General
of the United States